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FAQ: Will I need a NSW Workers Compensation policy even if I ONLY engage contractors?

Any person or company operating a business or trade and who engages contractors, must obtain and maintain a Workers Compensation policy. The Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act) Section 4 defines a worker as follows:

"worker" means a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing)"

Even if the trade or business does not employ "employees" and the contractors engaged appear not to be "deemed" workers under the Workplace Injury Management and Workers Compensation Act, 1998, the trade or business still has a potential workers compensation liability. The Court may find that a contractor's worker or a contractor to be a 'worker' and subsequently, the employer of the contractor would then be liable to pay compensation.

People working as contractors (including subcontractors and contractors under labour-hire service agreements) may also be 'deemed workers'. Workers compensation law does not rely on the tax status of the person carrying out the work to determine whether that person is a worker, deemed worker or contractor.

A NSW Workers Compensation policy operates to cover all workers and deemed workers whom the employer may engage and it is not necessary to arrange separate cover for contractors.

If a sole trader or partnership has workers' they must take out a Workers Compensation insurance policy. However, the sole trader and partners would not be covered by this insurance.

It is important to note that a proprietary limited company ('Pty Ltd') must have a current workers compensation insurance policy to cover all its workers. Also, Working directors (directors undertaking employee-type duties) are considered workers of the company.

Homeowners who are building their own homes should take out a workers compensation insurance policy to make sure they are fully covered. Any contractors engaged by an owner-builder may be deemed to be a worker of that owner-builder. Generally, people carrying on their own business, or tradespersons, (for example: plumbers, electricians, builders) have their own insurance. However, to be certain that you are protected always check that anyone you hire has their own workers compensation insurance policy by having them provide you with a current Certificate of Currency. (Remember, sole traders and partnerships are not eligible for workers compensation coverage.) Also, homeowners who employ or hire people to undertake domestic work at your home (for example: cleaners, gardeners) must take out a Domestic Workers Compensation insurance to cover any domestic workers employed within the home. It does not cover home-based businesses or strata titles.

Under the *Workers Compensation Act 1987*, an employer must have (and maintain) a workers compensation insurance policy (section 155) and in the event of non-compliance, the penalty is currently \$55,000 or imprisonment for six months, or both. Additionally, an employer who fails to obtain, or maintain in force, a policy of insurance, may be charged double the premium that would have been payable (section 156)

As a result of proposed changes to legislation, from 30 June 2008, you will no longer be required to obtain a workers compensation insurance policy for your workers if you pay, or expect to pay \$7,500 or less in annual remuneration. Remuneration includes wages and other amounts such as allowances, fringe benefits, superannuation and payments made to contractors who are deemed to be workers.

We recommend you visit the NSW Work Cover site www.workcover.nsw.gov.au which provides a wealth of information. Alternatively, you can contact WorkCover Assistance Service directly by calling ph: 13 1050 Fax: 02 9287 5491 (Monday to Friday Hours: 8:30am - 5:00pm). We welcome any further queries you may have.



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